

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BETZAIDA BURKE, et al. : CIVIL ACTION
:
v. : No. 16-5559
:
VEOLIA ENERGY COMPANY, et al. :

ORDER

AND NOW, this 1st day of February, 2017, upon consideration of Defendant the United States of America's Motion to Dismiss Plaintiffs' Complaint, Plaintiffs Betzaida and Joseph Burke's opposition thereto, and the United States' reply, and for the reasons set forth in the accompanying Memorandum, it is ORDERED the Motion (Document 10) is GRANTED. Plaintiffs' Complaint against the United States is DISMISSED for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). The dismissal is without prejudice as to Plaintiff Betzaida Burke and with prejudice as to Plaintiff Joseph Burke.

It is further ORDERED the Rule 16 conference scheduled for February 2, 2017, is CONTINUED to February 21, 2017, at 1:00 p.m. in Courtroom 11A. Counsel for all parties are required to complete Rule 26(a) disclosures, to confer pursuant to Rule 26(f), and to complete and submit to the Court the Joint Rule 16 Conference Information Report included in Judge Sánchez's procedures at least 24 hours prior to the Rule 16 Conference. The parties shall raise any objections to the continued existence of federal subject matter jurisdiction in this case in advance of the Rule 16 conference.¹

¹ Although Plaintiff's Complaint against the United States is dismissed, the United States has not moved to dismiss Defendant Veolia Energy Philadelphia, Inc.'s cross-claims for contribution and indemnification against it, *see* Veolia's Answer With Affirmative Defenses and Crossclaims, at 21, and those cross-claims appear to provide a basis for federal subject matter jurisdiction over the balance of the case, *see Tomlin v. Pease*, 2014 WL 1340624, at *6 (E.D. Pa. Apr. 4, 2014) (denying the United States' motion to dismiss FTCA cross-claims following the dismissal of the plaintiff's FTCA claims against the United States for lack of subject matter jurisdiction and

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, J.

holding the FTCA cross-claims provided an independent basis for the exercise of subject matter jurisdiction); *Rodgers v. Se. Pa. Transp. Co.*, No. 06-1640, 2006 WL 2924562, at *1-2 (E.D. Pa. Oct. 5, 2006) (same).